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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,000	07/09/2007	Zbigniew Mlynarski	2079/98295	4191
24628 7590 08/24/2010 Husch Blackwell Sanders, LLP Husch Blackwell Sanders LLP Welsh & Katz 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606				
EXAMINER				
MOSSER, KATHLEEN MICHELLE				
ART UNIT		PAPER NUMBER		
3715				
MAIL DATE		DELIVERY MODE		
08/24/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/594,000

**Applicant(s)**

MLYNARSKI, ZBIGNIEW

**Examiner**

Kathleen Mosser

**Art Unit**

3715

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/28)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_
- Paper No(s)/Mail Date 09/25/2006/06/06/2007

**DETAILED ACTION**

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 1-17 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. With respect to claims 1-11 and 15, the claims are directed to nothing more than an abstract idea as to how to manage dietary habits. Evidence that a method is directed to an abstract idea can be found if the process is not: (1) tied to a particular machine or apparatus, or (2) transform a particular article into a different state or thing. The use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility; the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity; and the transformation must be central to the purpose of the claimed process. The currently claimed method only sets forth properties of a method for managing dietary habits, there are no positive steps set forth. Further, those properties which are set forth are not in any manner tied to a machine or apparatus, nor is there any such underlying item to transform. As claimed the method only discloses an idea on how to manage dietary habits which includes a definition of a required energy supply, recording of the users consumed food, and calculations of the energy supplies to the user based upon properties of the food products consumed. Based upon consideration of all of the relevant factors with respect to the claim as a whole, claim(s) 1-11 and 15 are held to claim an abstract idea, and is/are therefore rejected as ineligible subject matter under 35 U.S.C. 101.

With respect to claim 12, though the preamble of the claim recites "a system", the claim body includes no structural features. Each of the claimed "elements" may be reasonably interpreted as a computer programming elements, thus rendering the claim as directed to nothing more than a computer program itself. As such, the claims are directed to non-statutory subject matter per se.

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With respect to claims 13, 14, 16, and 17, the claims are directed to non-statutory subject matter per se. The claims are each directed to a computer program per se. Such subject matter has been deemed non-statutory subject matter unless positively tied to a non-transitory computer readable medium which allows for the functionality to be realized when executed by a computer. Though claim 13 ties the program to a medium, the program is embodied on a data carrier, which includes carrier waves. Carrier waves are considered transitory mediums and are not patent eligible subject matter.

### ***Claim Objections***

2. Claims 1 and 12 are objected to because of the following informalities: The claims do not include the word "and" denoting the separation between the last and next to last elements. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 16 recites "A computer program... to implement the method of claim 12". However, claim 12 is a system claim which does not include any procedural steps. As such it is unclear what method the computer program is intended to implement.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Mault et al (US 2003/0208113). Mault et al teaches a system, computer program and method for managing dietary habits characterized in that: the required energy supply during the specific period of the user's activity is defined (caloric needs, paragraphs 146-147); information concerning the consumed products and times of consuming is introduced (diet logging, paragraph 191+) and energy supplies to the human organism are calculated based on the information concerning the energy content in food products and absorption velocity of alimentary components supplied in food from which human organism gets its energy (calculation of the predicted glycemic index based upon the foods eaten, paragraphs 21, 29 and 118), as in claims 1, 12-14, 16 and 17. A display in a diagram form (claims 5, 6, 12, 13, and 16-17) which includes maximum and minimum supplies of energy, periods of adequate nutrition, malnutrition, and excessive nutrition (claims 2, 7, 12, 13, and 15-17) is shown in figures 12 and 14. The daily energy supply being from the awakening to the falling asleep of a user being determined (claim 3) is shown in paragraphs 149. The requirement for energy being determined by dividing the period of activity into smaller units (claim 4) is shown in Figure 15. A list of recommended dishes being presented to the user (claims 8 and 10) is shown in Figure 14 and paragraph 134. Information concerning the health state of the user including information concerning particular inclination to obesity (claim 9) is shown in paragraph 124. Information including user's activity including information concerning changes of the user's lifestyle (claim 11) is shown in paragraph 142 as the user becoming physically active.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pilarski (US 2004/0180810) and Butler (US 2005/0071141).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kathleen Mosser whose telephone number is (571) 272-4435. The examiner can normally be reached on M-F 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on (571) 272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kathleen Mosser/  
Primary Examiner, Art Unit 3715

August 19, 2010